Supreme Court, U. S.
FILED
MAR 29 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1182

UNITED AIR LINES, INC.,
Petitioner,

vs.

KATHLEEN C. INDA,
Respondent.

Reply Brief of Petitioner United Air Lines, Inc. in Support of its Petition for Writ of Certiorari

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This brief is submitted in reply to respondent's opposition to our petition for writ of certiorari. We have but two points.

I.

In examining the question raised in our petition, there are necessarily two issues upon which this Court should focus. The first is on the intent of Congress in enacting Section 14 of the Equal Employment Opportunity Act of 1972. The second focus is on the constitutionality of retroactive legislation.

That is to say, if this Court determines that Congress *intended* the 180 day limitation period to apply retroactively to all charges of discrimination still before the Commission on March 24, 1972,

regardless of how distant in time they were filed, then the critical question of whether the Constitution permits such retroactive legislation must be resolved.

The decision of the Ninth Circuit has sanctioned the right of Congress to enact retroactively legislation rendering unlawful that which occurred more than three years prior to the legislation—that which was "lawful" and had "no present legal consequences" for more than three years. *United Air Lines v. Evans,* 431 U.S. 553, 558 (1977). We submit that the Due Process Clause of the Fifth Amendment stands as a bar to any such retroactive legislation by Congress. *William Danzer & Co. v. Gulf & Ship Island R. Co.,* 268 U.S. 633 (1924).

Respondent's brief in opposition is silent on this important constitutional issue.

II.

Respondent asserts in opposition to the petition that the decision of this Court on the question presented is "unnecessary." Respondent has also asserted in her opposition at page 10 that:

> "The maximum benefit of this Court's efforts on review would be to reduce United's back-pay liability to Inda by $1,248.00. [Footnote omitted] Surely this Court's strained resources can be better spent."

We know of no decision of this Court or any relevant principle which conditions relief by this Court upon the amount at issue. If the question presented is of general significance, as we urge that it is, the amount involved in a particular case is of no moment. Moreover, in addition to the necessary adjustment in back pay, Inda's seniority would also have to be adjusted by at least 2½ years. As to co-plaintiff Moritz's seniority, the Ninth Circuit left no doubt:

> ". . . judgment in favor of Moritz is vacated and the matter remanded with instructions to modify the award of back pay to run from November 14, 1968, and to adjust seniority to conform with re-employment as of that date." (Appendix A, p. 16 to the Petition.)

We submit that such an adjustment in seniority as well as back pay is no less significant than the adjustments this Court made in Carolyn Evans' seniority last term. Accordingly, we respectfully pray that the petition be granted.

Dated: San Francisco, California, March 28, 1978.

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